

1 that milestones for performance, if any, are met.

2 C. Consultant has requested to receive regular payments. City shall pay
3 Consultant in due course of payments following receipt from Consultant and approval by
4 City of invoices showing the services or task performed, the time expended (if billing is
5 hourly), and the name of the Project. Consultant shall certify on the invoices that
6 Consultant has performed the services in full conformance with this Agreement and is
7 entitled to receive payment. Each invoice shall be accompanied by a progress report
8 indicating the progress to date of services performed and covered by the invoice, including
9 a brief statement of any Project problems and potential causes of delay in performance,
10 and listing those services that are projected for performance by Consultant during the next
11 invoice cycle. Where billing is done and payment is made on an hourly basis, the parties
12 acknowledge that this arrangement is either customary practice for Consultant's profession,
13 industry, or business, or is necessary to satisfy audit and legal requirements which may
14 arise due to the fact that City is a municipality.

15 D. Consultant represents that Consultant has obtained all necessary
16 information on conditions and circumstances that may affect its performance and has
17 conducted site visits, if necessary.

18 E. **CAUTION:** Consultant shall not begin work until this Agreement has been
19 signed by both parties and until Consultant's evidence of insurance has been delivered to
20 and approved by the City.

21 2. TERM. The term of this Agreement shall commence at midnight on
22 August 1, 2006, and shall terminate at 11:59 p.m. on July 31, 2007, unless sooner
23 terminated as provided in this Agreement, or unless the services or the Project is
24 completed sooner.

25 3. COORDINATION AND ORGANIZATION.

26 A. Consultant shall coordinate its performance with City's representative, if
27 any, named in Exhibit "B", attached to this Agreement and incorporated by this reference.
28 Consultant shall advise and inform City's representative of the work in progress on the

1 Project in sufficient detail so as to assist City's representative in making presentations and
2 in holding meetings on the Project. City shall furnish to Consultant information or
3 materials, if any, described in Exhibit "C" attached to this Agreement and incorporated by
4 this reference, and shall perform any other tasks described in the Exhibit.

5 B. The parties acknowledge that a substantial inducement to City for entering
6 this Agreement was and is the reputation and skill of Consultant's key employee Ali R.
7 Nowroozi. City shall have the right to approve any person proposed by Consultant to
8 replace that key employee.

9 4. INDEPENDENT CONTRACTOR. In performing its services, Consultant
10 is and shall act as an independent contractor and not an employee, representative, or
11 agent of City. Consultant shall have control of Consultant's work and the manner in which
12 it is performed. Consultant shall be free to contract for similar services to be performed for
13 others during this Agreement provided, however, that Consultant acts in accordance with
14 Section 9 and Section 11 of this Agreement. Consultant acknowledges and agrees that
15 a) City will not withhold taxes of any kind from Consultant's compensation, b) City will not
16 secure workers' compensation or pay unemployment insurance to, for or on Consultant's
17 behalf, and c) City will not provide and Consultant is not entitled to any of the usual and
18 customary rights, benefits or privileges of City employees. Consultant expressly warrants
19 that neither Consultant nor any of Consultant's employees or agents shall represent
20 themselves to be employees or agents of City.

21 5. INSURANCE. As a condition precedent to the effectiveness of this
22 Agreement, Consultant shall procure and maintain at Consultant's expense for the duration
23 of this Agreement from insurance companies that are admitted to write insurance in
24 California or from authorized non-admitted insurance companies that have ratings of or
25 equivalent to A:VIII by A.M. Best Company the following insurance:

26 (a) Commercial general liability insurance (equivalent in scope to ISO
27 form CG 00 01 11 85 or CG 00 01 11 88) in an amount not less than
28 \$1,000,000 per each occurrence and \$2,000,000 general aggregate. This

1 coverage shall include but not be limited to broad form contractual liability,
2 cross liability, independent contractors liability, and products and completed
3 operations liability. The City, its officials, employees and agents shall be
4 named as additional insureds by endorsement (on City's endorsement form
5 or on an endorsement equivalent in scope to ISO form CG 20 10 11 85 or to
6 both CG 20 10 10 01 and CG 20 37 10 01), and this insurance shall contain
7 no special limitations on the scope of protection given to the City, its officials,
8 employees and agents.

9 (b) Workers' Compensation insurance as required by the California
10 Labor Code and employer's liability insurance in an amount not less than
11 \$1,000,000.

12 (c) Professional liability or errors and omissions insurance in an
13 amount not less than \$1,000,000 per claim.

14 (d) Commercial automobile liability insurance (equivalent in scope to
15 ISO form CA 00 01 06 92), covering Auto Symbol 1 (Any Auto) in an amount
16 not less than \$500,000 combined single limit per accident.

17 Any self-insurance program, self-insured retention, or deductible must be
18 separately approved in writing by City's Risk Manager or designee and shall protect City,
19 its officials, employees and agents in the same manner and to the same extent as they
20 would have been protected had the policy or policies not contained retention or deductible
21 provisions. Each insurance policy shall be endorsed to state that coverage shall not be
22 reduced, non-renewed, or canceled except after thirty (30) days prior written notice to City,
23 and shall be primary and not contributing to any other insurance or self-insurance
24 maintained by City. Consultant shall notify the City in writing within five (5) days after any
25 insurance has been voided by the insurer or cancelled by the insured. If this coverage is
26 written on a "claims made" basis, it must provide for an extended reporting period of not
27 less than one year, commencing on the date this Agreement expires or is terminated,
28 unless Consultant guarantees that Consultant will provide to the City evidence of

1 uninterrupted, continuing coverage for a period of not less than three (3) years,
2 commencing on the date this Agreement expires or is terminated.

3 Consultant shall require that all subconsultants or contractors which
4 Consultant uses in the performance of these services maintain insurance in compliance
5 with this Section unless otherwise agreed in writing by City's Risk Manager or designee.

6 Prior to the start of performance, Consultant shall deliver to City certificates
7 of insurance and the endorsements for approval as to sufficiency and form. In addition,
8 Consultant, shall, within thirty (30) days prior to expiration of the insurance, furnish to City
9 certificates of insurance and endorsements evidencing renewal of the insurance. City
10 reserves the right to require complete certified copies of all policies of Consultant and
11 Consultant's subconsultants and contractors, at any time. Consultant shall make available
12 to City's Risk Manager or designee all books, records and other information relating to this
13 insurance, during normal business hours.

14 Any modification or waiver of these insurance requirements shall only be
15 made with the approval of City's Risk Manager or designee. Not more frequently than
16 once a year, the City's Risk Manager or designee may require that Consultant,
17 Consultant's subconsultants and contractors change the amount, scope or types of
18 coverages required in this Section if, in his or her sole opinion, the amount, scope, or types
19 of coverages are not adequate.

20 The procuring or existence of insurance shall not be construed or deemed
21 as a limitation on liability relating to Consultant's performance or as full performance of or
22 compliance with the indemnification provisions of this Agreement.

23 **6. ASSIGNMENT AND SUBCONTRACTING.** This Agreement contemplates
24 the personal services of Consultant and Consultant's employees, and the parties
25 acknowledge that a substantial inducement to City for entering this Agreement was and is
26 the professional reputation and competence of Consultant and Consultant's employees.
27 Consultant shall not assign its rights or delegate its duties under this Agreement, or any
28 interest in this Agreement, or any portion of it, without the prior approval of City, except that

1 Consultant may with the prior approval of the City Manager of City, assign any moneys due
2 or to become due the Consultant under this Agreement. Any attempted assignment or
3 delegation shall be void, and any assignee or delegate shall acquire no right or interest by
4 reason of an attempted assignment or delegation. Furthermore, Consultant shall not
5 subcontract any portion of its performance without the prior approval of the City Manager
6 or designee, or substitute an approved subconsultant or contractor without approval prior
7 to the substitution. Nothing stated in this Section shall prevent Consultant from employing
8 as many employees as Consultant deems necessary for performance of this Agreement.

9 7. CONFLICT OF INTEREST. Consultant, by executing this Agreement,
10 certifies that, at the time Consultant executes this Agreement and for its duration,
11 Consultant does not and will not perform services for any other client which would create
12 a conflict, whether monetary or otherwise, as between the interests of City and the
13 interests of that other client. And, Consultant shall obtain similar certifications from
14 Consultant's employees, subconsultants and contractors.

15 8. MATERIALS. Consultant shall furnish all labor and supervision, supplies,
16 materials, tools, machinery, equipment, appliances, transportation, and services necessary
17 to or used in the performance of Consultant's obligations under this Agreement, except as
18 stated in Exhibit "C".

19 9. OWNERSHIP OF DATA. All materials, information and data prepared,
20 developed, or assembled by Consultant or furnished to Consultant in connection with this
21 Agreement, including but not limited to documents, estimates, calculations, studies, maps,
22 graphs, charts, computer disks, computer source documentation, samples, models,
23 reports, summaries, drawings, designs, notes, plans, information, material, and
24 memorandum ("Data") shall be the exclusive property of City. Data shall be given to City,
25 and City shall have the unrestricted right to use and disclose the Data in any manner and
26 for any purpose without payment of further compensation to Consultant. Copies of Data
27 may be retained by Consultant but Consultant warrants that Data shall not be made
28 available to any person or entity for use without the prior approval of City. This warranty

1 shall survive termination of this Agreement for five (5) years.

2 10. TERMINATION. Either party shall have the right to terminate this
3 Agreement for any reason or no reason at any time by giving fifteen (15) calendar days
4 prior notice to the other party. In the event of termination under this Section, City shall pay
5 Consultant for services satisfactorily performed and costs incurred up to the effective date
6 of termination for which Consultant has not been previously paid. The procedures for
7 payment in Section 1.B. with regard to invoices shall apply. On the effective date of
8 termination, Consultant shall deliver to City all Data developed or accumulated in the
9 performance of this Agreement, whether in draft or final form, or in process. And,
10 Consultant acknowledges and agrees that City's obligation to make final payment is
11 conditioned on Consultant's delivery of the Data to the City.

12 11. CONFIDENTIALITY. Consultant shall keep the Data confidential and
13 shall not disclose the Data or use the Data directly or indirectly other than in the course of
14 performing its services, during the term of this Agreement and for five (5) years following
15 expiration or termination of this Agreement. In addition, Consultant shall keep confidential
16 all information, whether written, oral, or visual, obtained by any means whatsoever in the
17 course of performing its services for the same period of time. Consultant shall not disclose
18 any or all of the Data to any third party, or use it for Consultant's own benefit or the benefit
19 of others except for the purpose of this Agreement.

20 12. BREACH OF CONFIDENTIALITY. Consultant shall not be liable for a
21 breach of confidentiality with respect to Data that: (a) Consultant demonstrates Consultant
22 knew prior to the time City disclosed it; or (b) is or becomes publicly available without
23 breach of this Agreement by Consultant; or (c) a third party who has a right to disclose
24 does so to Consultant without restrictions on further disclosure; or (d) must be disclosed
25 pursuant to subpoena or court order.

26 13. ADDITIONAL COSTS AND REDESIGN. A. Any costs incurred by the
27 City due to Consultant's failure to meet the standards required by the scope of work or
28 Consultant's failure to perform fully the tasks described in the scope of work which, in

1 either case, causes the City to request that Consultant perform again all or part of the
2 Scope of Work shall be at the sole cost of Consultant and City shall not pay any additional
3 compensation to Consultant for its re-performance.

4 B. If the Project involves construction and the scope of work requires
5 Consultant to prepare plans and specifications with an estimate of the cost of construction,
6 then Consultant may be required to modify the plans and specifications, any construction
7 documents relating to the plans and specifications, and Consultant's estimate, at no cost
8 to City, when the lowest bid for construction received by City exceeds by more than ten
9 percent (10%) Consultant's estimate. This modification shall be submitted in a timely
10 fashion to allow City to receive new bids within four (4) months after the date on which the
11 original plans and specifications were submitted by Consultant.

12 14. AMENDMENT. This Agreement, including all Exhibits, shall not be
13 amended, nor any provision or breach waived, except in writing signed by the parties which
14 expressly refers to this Agreement.

15 15. LAW. This Agreement shall be governed by and construed pursuant to
16 the laws of the State of California (except those provisions of California law pertaining to
17 conflicts of laws). Consultant shall comply with all laws, ordinances, rules and regulations
18 of and obtain all permits, licenses, and certificates required by all federal, state and local
19 governmental authorities.

20 16. ENTIRE AGREEMENT. This Agreement, including all Exhibits,
21 constitutes the entire understanding between the parties and supersedes all other
22 agreements, oral or written, with respect to the subject matter in this Agreement.

23 17. INDEMNITY. Consultant shall, with respect to services performed in
24 connection with this Agreement, indemnify and hold harmless the City, its Boards,
25 Commissions, and their officials, employees and agents (collectively in this Section, "City")
26 from and against any and all liability, claims, demands, damage, loss, causes of action,
27 proceedings, penalties, costs and expenses (including attorney's fees, court costs, and
28 expert and witness fees) (collectively "Claims" or individually "Claim"). Claims include

1 allegations and include by way of example but are not limited to: Claims for property
2 damage, personal injury or death arising in whole or in part from any negligent act or
3 omission of Consultant, its officers, employees, agents, sub-consultants, or anyone under
4 Consultant's control (collectively "Indemnitor"); Consultant's breach of this Agreement;
5 misrepresentation; willful misconduct; and Claims by any employee of Indemnitor relating
6 in any way to worker's compensation. Independent of the duty to indemnify and as a
7 free-standing duty on the part of Consultant, Consultant shall defend City and shall
8 continue this defense until the Claim is resolved, whether by settlement, judgment or
9 otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of
10 Indemnitor shall be required for the duty to defend to arise. Consultant shall notify the City
11 of any Claim within ten (10) days. Likewise, City shall notify Consultant of any Claim, shall
12 tender the defense of the Claim to Consultant, and shall assist Consultant, as may be
13 reasonably requested, in the defense.

14 18. AMBIGUITY. In the event of any conflict or ambiguity between this
15 Agreement and any Exhibit, the provisions of this Agreement shall govern.

16 19. COSTS. If there is any legal proceeding between the parties to enforce
17 or interpret this Agreement or to protect or establish any rights or remedies under it, the
18 prevailing party shall be entitled to its costs and expenses, including reasonable attorneys'
19 fees and court costs (including appeals).

20 20. NONDISCRIMINATION. In connection with performance of this
21 Agreement and subject to applicable rules and regulations, Consultant shall not
22 discriminate against any employee or applicant for employment because of race, religion,
23 national origin, color, age, sex, sexual orientation, AIDS, HIV status, handicap, or disability.
24 Consultant shall ensure that applicants are employed, and that employees are treated
25 during their employment, without regard to these bases. These actions shall include, but
26 not be limited to, the following: employment, upgrading, demotion or transfer, recruitment
27 or recruitment advertising, layoff or termination, rates of pay or other forms of
28 compensation, and selection for training, including apprenticeship.

1 It is the policy of City to encourage the participation of Disadvantaged,
2 Minority and Women-owned Business Enterprises in City's procurement process, and
3 Consultant agrees to use its best efforts to carry out this policy in its use of subconsultants
4 and contractors to the fullest extent consistent with the efficient performance of this
5 Agreement. Consultant may rely on written representations by subconsultants and
6 contractors regarding their status. City's policy is attached as Exhibit "D" to this
7 Agreement. Consultant shall report to City in May and in December or, in the case of
8 short-term agreements, prior to invoicing for final payment, the names of all subconsultants
9 and contractors hired by Consultant for this Project and information on whether or not they
10 are a Disadvantaged, Minority or Women-Owned Business Enterprise, as defined in
11 Section 8 of the Small Business Act (15 U.S.C. Sec. 637).

12 21. NOTICES. Any notice or approval required by this Agreement shall be
13 in writing and personally delivered or deposited in the U.S. Postal Service, first class,
14 postage prepaid, addressed to Consultant at the address first stated above, and to the City
15 at 333 West Ocean Boulevard, Long Beach, California 90802, Attn: City Manager with a
16 copy to the City Engineer at the same address. Notice of change of address shall be given
17 in the same manner as stated for other notices. Notice shall be deemed given on the date
18 deposited in the mail or on the date personal delivery is made, whichever occurs first.

19 22. COPYRIGHTS AND PATENT RIGHTS. A. Consultant shall place the
20 following copyright protection on all Data: © City of Long Beach, California _____, inserting
21 the appropriate year.

22 B. City reserves the exclusive right to seek and obtain a patent or copyright
23 registration on any Data or other result arising from Consultant's performance of this
24 Agreement. By executing this Agreement, Consultant assigns any ownership interest
25 Consultant may have in the Data to the City.

26 C. Consultant warrants that the Data does not violate or infringe any patent,
27 copyright, trade secret or other proprietary right of any other party. Consultant agrees to
28 and shall protect, defend, indemnify and hold City, its officials and employees harmless

1 from any and all claims, demands, damages, loss, liability, causes of action, costs or
2 expenses (including reasonable attorneys' fees) whether or not reduced to judgment,
3 arising from any breach or alleged breach of this warranty.

4 23. COVENANT AGAINST CONTINGENT FEES. Consultant warrants that
5 Consultant has not employed or retained any entity or person to solicit or obtain this
6 Agreement and that Consultant has not paid or agreed to pay any entity or person any fee,
7 commission, or other monies based on or from the award of this Agreement. If Consultant
8 breaches this warranty, City shall have the right to terminate this Agreement immediately
9 notwithstanding the provisions of Section 10 or, in its discretion, to deduct from payments
10 due under this Agreement or otherwise recover the full amount of the fee, commission, or
11 other monies.

12 24. WAIVER. The acceptance of any services or the payment of any money
13 by City shall not operate as a waiver of any provision of this Agreement or of any right to
14 damages or indemnity stated in this Agreement. The waiver of any breach of this
15 Agreement shall not constitute a waiver of any other or subsequent breach of this
16 Agreement.

17 25. CONTINUATION. Termination or expiration of this Agreement shall not
18 affect rights or liabilities of the parties which accrued pursuant to Sections 7, 10, 11, 17,
19 19, 22, and 28 prior to termination or expiration of this Agreement.

20 26. TAX REPORTING. As required by federal and state law, City is
21 obligated to and will report the payment of compensation to Consultant on
22 Form 1099-Misc. Consultant shall be solely responsible for payment of all federal and
23 state taxes resulting from payments under this Agreement. Consultant's Employer
24 Identification Number is [REDACTED] If Consultant has a Social Security Number rather
25 than an Employer Identification Number, then Consultant shall submit that Social Security
26 Number in writing to City's Accounts Payable, Department of Financial Management.
27 Consultant acknowledges and agrees that City has no obligation to pay Consultant until
28 Consultant provides one of these numbers.

Robert E. Shannon
City Attorney of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802-4664
Telephone (562) 570-2200

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27. ADVERTISING. Consultant shall not use the name of City, its officials or employees in any advertising or solicitation for business or as a reference, without the prior approval of the City Manager or designee.

28. AUDIT. City shall have the right at all reasonable times during the term of this Agreement and for a period of five (5) years after termination or expiration of this Agreement to examine, audit, inspect, review, extract information from, and copy all books, records, accounts, and other documents of Consultant relating to this Agreement.

29. THIRD PARTY BENEFICIARY. This Agreement is not intended or designed to or entered for the purpose of creating any benefit or right for any person or entity of any kind that is not a party to this Agreement.

IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

TAJANN ENGINEERING AND CONSTRUCTION, INC., a California corporation

July, 24, 2006

By Mandana Abbassian
President
Mandana Abbassian
(Type or Print Name)

July, 24, 2006

By Ali R. Nowroozi
Secretary
ALI R. NOWROOZI
(Type or Print Name)

"Consultant"

CITY OF LONG BEACH

Aug 14, 2006

By Mard Spivack
City Manager

"City"

This Agreement is approved as to form on 8/3, 2006.

ROBERT E. SHANNON, City Attorney

By D. Quinn
Senior Deputy

DFG:bg 7/7/06(AGR_Tajann)06-03289
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EXHIBIT “A”

Scope of Work

Rate Sheet
for the Annual Contract for As-Needed Scanning Services and Record Management

<u>Item No.</u>	<u>Description</u>	<u>Unit of Measure</u>	<u>Unit Price</u>
1	Page Scanning - B&W 300 dpi	EA	\$ 0.07
2	Page Scanning - Grayscale 300 dpi	EA	\$ 0.07
3	Large Format - B & W 400 dpi	EA	\$ 0.80
4	Large Format - Grayscale 400dpi	EA	\$ 0.80
5	Aperture Cards - B&W 400 dpi	EA	\$ 0.10
6	Aperture Cards - Grayscale 400 dpi	EA	\$ 0.10
7	Microfilm - 16mm B & W 200 dpi	EA	\$ 0.08
8	Microfilm - 16mm Grayscale 200 dpi	EA	\$ 0.08
9	Microfilm - 35mm B&W 400 dpi	EA	\$ 0.08
10	Microfilm - 35mm Grayscale 400 dpi	EA	\$ 0.08
11	Books -Grayscale 400 dpi	EA	\$ 0.15
12	Indexing - 3 Keywords	EA	\$ 0.004
13	Indexing - 5 Keywords	EA	\$ 0.004
14	Indexing - 8 Keywords	EA	\$ 0.004
15	Indexing - 10 Keywords	EA	\$ 0.004
16	External Hard Drive - 250 GB USB2	EA	\$ 400.00
17	Document Preperation	Hourly	\$ 30.00

EXHIBIT “B”

City’s Representative is Gillis Monroe.

There is no Exhibit "C".

**CITY OF LONG BEACH POLICY FOR DISADVANTAGED, MINORITY-OWNED
AND WOMEN-OWNED BUSINESS ENTERPRISES**

It is the policy of the City of Long Beach to utilize Disadvantaged, Minority-owned and Women-owned business Enterprises in all aspects of contracting including construction, the purchase of materials and services, including professional services, leases and the granting of concessions.

EXHIBIT “D”